

ORIGINAL

**FILED**

DISTRICT COURT OF GUAM

DEC 23 2004 *qp*

**MARY L.M. MORAN**  
**CLERK OF COURT**

(7)

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7  
8 IN THE UNITED STATES DISTRICT COURT  
9 DISTRICT OF GUAM

10  
11 FRANCISCO QUITUGUA,

12 Plaintiff,

13 vs.

14 UNITED STATES OF AMERICA,

15 Defendant.  
16

CIVIL CASE NO. 04-00040

UNITED STATES ANSWER

17 Federal Defendant United States of America, by and through its counsel,  
18 Leonardo M. Rapadas, United States Attorney for the Districts of Guam and NMI,  
19 and Mikel W. Schwab, Assistant United States Attorney for said District, answers  
20 Plaintiffs' Complaint in like numbered paragraphs as follows:

- 21 1. This Paragraph sets forth jurisdictional allegations to which no  
22 response is required. To the extent this paragraph is deemed to  
23 contain allegations of material fact, they are **DENIED**.  
24  
25 2. Defendant admits it was involved in a low speed rear end accident  
26 with plaintiff on July 2, 2003, within the judicial district of Guam.  
27  
28

1 Except as expressly admitted, the remaining allegations are  
2 **DENIED.**

3  
4 3. Defendant admits it received an administrative claim from plaintiff  
5 on September 10, 2003 in the amount of \$9,007.82 and that more  
6 than six months have passed since the Postal Service's receipt of  
7 plaintiff's claim. Except as expressly admitted, the remaining  
8 allegations are **DENIED.**

9  
10 4. Defendant is without sufficient information to admit or deny the  
11 allegations of this paragraph. Said allegations are therefore  
12 **DENIED.**

13  
14 5. Defendant is without sufficient information to admit or deny the  
15 allegations of this paragraph. Said allegations are therefore  
16 **DENIED.**

17  
18 6. Defendant is without sufficient information to admit or deny the  
19 allegations of this paragraph. Said allegations are therefore  
20 **DENIED.**

21  
22 7. Defendant re-alleges its responses to paragraphs 1-6 of plaintiff's  
23 complaint herein.

24  
25 8. The Postal Service admits that at approximately 1300 hours on July  
26 2, 2003, David K. Erwin was a postal employee driving a postal-  
27 owned vehicle. Except as expressly admitted, the remaining  
28 allegations are **DENIED.**

1           9.    **DENY.**

2  
3           10. Defendant is without sufficient information to admit or deny the  
4           allegations of this paragraph. Said allegations are therefore  
5           **DENIED**

6  
7           11. Defendant is without sufficient information to admit or deny the  
8           allegations of this paragraph. Said allegations are therefore  
9           **DENIED**

10  
11          12. Defendant is without sufficient information to admit or deny the  
12          allegations of this paragraph. Said allegations are therefore  
13          **DENIED.**

14  
15          13. Defendant is without sufficient information to admit or deny the  
16          allegations of this paragraph. Said allegations are therefore  
17          **DENIED.**

18  
19          The paragraph beginning with "WHEREFORE" sets forth Plaintiff's prayer  
20 for relief to which no response is required. To the extent this paragraph is  
21 deemed to contain allegations of material fact, they are **DENIED.**

22  
23          All allegations not specifically responded to above are **DENIED.**  
24 **AND FURTHER** answering, Defendant avers:

1                                   **AFFIRMATIVE DEFENSES**

2  
3                                   **FIRST AFFIRMATIVE DEFENSE**

4           Pursuant to 28 U.S.C. § 2675, Plaintiffs are prohibited from claiming or  
5           recovering an amount against the United States in excess of that which was  
6           set forth in a claim presented to the United States Postal Service.

7  
8                                   **SECOND AFFIRMATIVE DEFENSE**

9           Pursuant to 28 U.S.C. § 2674, Plaintiff is proscribed from recovering any  
10          amount for prejudgment interest against the United States of America.

11  
12                                  **THIRD AFFIRMATIVE DEFENSE**

13          Under 28 U.S.C. §2412(d)(1)(A), Plaintiff cannot recover attorney's fees  
14          from the United States of America.

15  
16                                  **FOURTH AFFIRMATIVE DEFENSE**

17          Defendant reserves the right to amend its Answer with additional defenses  
18          of which it may become aware as discovery progresses and to raise any  
19          other matter constituting an avoidance or affirmative defense.

20  
21          **WHEREFORE**, having fully answered all counts of the Complaint,  
22          Defendant prays that Plaintiff takes nothing by way of his Complaint against it,

23        //

24        //

25        //

26        //

27        //

28        //

1 that the same be dismissed, and that judgment be awarded in favor of  
2 Defendant, together with costs and such other and further relief as the Court  
3 deems appropriate in this case.

4  
5 Respectfully submitted,

6 LEONARDO M. RAPADAS  
7 United States Attorney  
8 Districts of Guam and NMI

9   
10 MIKEL W. SCHWAB  
11 Assistant United States Attorney  
12


13 Of Counsel:  
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CERTIFICATE OF SERVICE

I, FRANCES B. LEON GUERRERO, Legal Assistant, working in the U.S. Attorney's Office, in the District of Guam, hereby certify that a copy of the "United States Answer", in Civil Case No. 04-00040, Francisco Quitugua v. United States of America, was served by personal service to the following attorney of record:

Mark William, Esq.  
Law Offices of Mark E. Williams, P.C.  
Suite 201, Iris Building  
315 S. Marine Corps Drive  
Tamuning, Guam 96913

Dated: December 23, 2004

  
FRANCES B. LEON-GUERRERO  
Legal Assistant